

In the Matter of License No. 246725
Issued to: VERNON W. HANSEN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1305

VERNON W. HANSEN

This appeal was taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 20 July 1961, an Examiner of the United States Coast Guard at Portland, Oregon revoked Appellant's license upon finding him guilty of negligence. The specification found proved alleges that while serving as Master on board the United States SS PORTLAND TRADER under authority of the license above described, on or about 5 January 1961, Appellant did:

"negligently navigate said vessel so as to cause her to ground on Tubbataha Reefs, in the Sulu Sea."

At the hearing, Appellant, represented by counsel, entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence, by stipulation, the Findings of Facts of the U. S. Coast Guard investigation into the casualty.

Appellant testified in his defense. He described Tubbataha Reefs and pointed out that it was more dangerous to proceed on voyage than to attempt to obtain to fix at Tubbataha Reefs about halfway across the Sulu Sea. Appellant's testimony also included the statements that when the dead reckoning position was 9 miles southwest of Tubbataha Reefs' abandoned lighthouse at 2340 (R. 43), he set a pattern to search for the light structure by moving 2 miles farther north each time the vessel completed steaming on an easterly and then a westerly course (R. 42, 73); the turning radius of the ship with right full rudder is 1/2 to 3/4 of a mile (R. 42); Appellant estimated the reef could be seen "within 2 to 3 miles" (R. 41) but he did not see the reef until it was 1/4 of a mile ahead (R. 46); the ship struck an uncharted pinnacle (R. 52); Appellant could see black water for a "good 300 yards" between the white water on the reef and the point of impact (R. 47).

At the end of the hearing, the Examiner rendered the decision

in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking Appellant's license and providing for the issuance of a chief officer's license to be suspended for six months on twelve months' probation.

FINDINGS OF FACT

On January 4, 1961, the United States Steam Ship PORTLAND TRADER, a liberty ship, was underway enroute from a U.S. West Coast port bound for Calcutta, India with a cargo of wheat. The Appellant was aboard in the capacity of Master acting under authority of his license. The route selected upon commencement of the voyage included a stop at Hawaii for bunkers, thence through the Surigao Strait, across the Mindanao and Sulu Seas in the Philippine Islands, on through the Balabac Strait, thence to Singapore for further fueling. The voyage ended on Tubbataha Reefs, halfway across the Sulu Sea.

Appellant wanted to obtain a fix upon entering the Sulu Sea so that he could set a course taking him three miles south of Tubbataha Reefs (R. 29) where he could obtain another fix to head for Balabac Strait. At 0630 on 4 January 1961, Appellant fix his position, visually, off the south end of Negros Island, at 9 degrees North, 123 degrees East. Setting the course at 265 degrees true and proceeding at a speed of about 11.5 knots, Appellant expected to reach Balabac Strait in about thirty hours. This would have given him daylight for making the strait and its approaches. Appellant had been informed that the light at Balabac Strait was out. The Sailing Directions indicated that the light at the south tip of Tubbataha Reefs was also extinguished. Upon entering the Sulu Sea, skies were overcast, there was occasional rain and the sea was moderate, east by northeast.

The overcast condition into the night although the moon was "in and out" (R. 41). Hydrographic Office information showed the set of the sea between Negros Island and Tubbataha Reefs to be slightly north of west. Also, Appellant observed steering during the day to be off to the right of the course. Celestial sights were not reliable due to a hazy horizon. Nevertheless, the positions plotted from the sights indicated that the ship was north of the course line. For these reasons, Appellant changed course to 262 degrees true at 2000. At 2200, Appellant changed course to 254 degrees true.

All hands had been instructed to watch for the lighthouse and the surf breaking on the luminescent reefs. A lookout was posted on the flying bridge with binoculars. Visibility for an unlighted object such as the lighthouse was not more than 3 miles. Lighted vessels were observed at about six miles. The water was too deep

to get fathometer readings.

At a speed of 11.5 knots, the vessel would have been south of Tubbataha Reefs about 2330. At 2340, when Appellant felt he was past the reef, he changed course to 359 true in order to locate the unlighted abandoned lighthouse structure rising 130 feet above the water. At this time, the ship was actually 5 mile south and about a mile to the east of the lighthouse having made good a speed between 11 and 11.5 knots. At 2355, there was another change of course to 079. At 0100 January 5, course was changed to 279. At 0200, Appellant saw the white water on the reef ahead at a distance of about a quarter of mile. He ordered hard right rudder and steady on 090. At about the time the helmsman checked the swing of the vessel, she momentarily struck aft on the reef.

The engines stopped as one of the propeller blades was so badly twisted that it could not pass the rudder stock. The vessel drifted in deep water for the next three and one-half hours. Then, she was set on the reef and drifted along it in a southerly direction, pounding heavily, until she stopped about 2 miles, bearing 030 true, from the lighthouse. She remained here until after abandoned, at 1530 on 5 January.

Appellant has no prior record.

BASES OF APPEAL

It is contended that the specification is vague and indefinite; it does not allege ultimate facts but simply states a conclusion. Appellant was not charged with or found guilty of specific acts of negligence such as excessive speed.

It was a proper exercise of the judgement and discretion of a Master to turn north to fix on the lighthouse before proceeding toward the dangerous shoals approaching Balabac Strait. At most, Appellant was guilty of an error of judgement and not negligence.

The evidence clearly establishes that the ship struck a submerged pinnacle a quarter of a mile offshore from the reef and did not strike Tubbataha Reefs.

The order revoking Appellant's license as Master is cruel and inhuman under the circumstances.

Appearances: Mautz, Souther, Spaulding, Kinsey and
Williamson of Portland, Oregon, by Kenneth E.
Roberts, Esquire, of Counsel.

OPINION

Jurisdiction is established by the fact that Appellant was acting under authority of his license when his ship was involved in a marine casualty. The statute (46 U.S. Code 239) does not limit jurisdiction depending upon the location of the casualty.

A brief explanation follows concerning the findings of fact as to the position of the vessel when course was changed to the north at 2340, the speed made good between 11 and 11.5 knots, the visibility of the lighthouse at not more than 3 miles, and the initial damage being done by the reef.

Accepting Appellant's estimate that the lighthouse could be seen 3 miles away, a plot of the course after 2340, at the speed of 11.5 knots as testified to by Appellant (R. 42), shows that the ship must have been about 5 miles south and slightly to the east of the lighthouse at 2340 in order not to have approached close enough from the south to sight the unlighted structure before turning from course 359 true to an easterly course at 2355 and still come close to the reef at 0200 on the westerly course without sighting the structure to the south. Steaming for an hour each on courses 079 and 279 true placed the dead reckoning position 4 mile north of the starting position rather than 2 miles to the north as Appellant testified he intended to do. The approximate position at 2340 indicates that the speed made good from Negros Island was between 11 and 11.5 knots.

The finding that the ship initially struck the reef is supported by Appellant's testimony that the reef was sighted about 1/4 of a mile away (R. 46: at most, 800 yards) and that the radius of the ship's turning circle is at least 1/2 mile. Appellant's additional testimony implying that there was at least 300 yards of deep water between the reef and the pinnacle which was hit is inconsistent with these two factors. Even assuming that the object struck was separated from the main chain of the reef, it would be unreasonable to conclude that this was an uncharted pinnacle which was not part of the reef.

Appellant's objection to the wording of the specification is not accepted as a basis for reversal. The ultimate facts alleged are that Appellant's negligent navigation caused the ship to ground on Tubbataha Reefs. In both the stipulated evidence and Appellant's direct examination, the navigation of the ship and other circumstances leading up to the casualty were covered in detail. Hence, Appellant was acquainted with the issues involved relative to the alleged offense.

Appellant was faced with the choice of continuing on without a fix, waiting for 3 to 4 hours until daylight, or searching for the dark lighthouse on the southern tip of Tubbataha Reefs. His

conduct must be judged by the knowledge he had, or ought to have had, at the time. Appellant was negligent if he failed to exercise the care which a reasonably careful and prudent Master would exercise under the same circumstances. Since he was responsible for the safety of the crew, cargo and vessel, it was Appellant's duty to take precaution in proportion to the danger involved.

The Examiner concluded that the act of turning northward from a safe position into the face of a known hazard was more than mere error of judgement since this was done at night in order to locate an unlighted structure on a dangerous reef,; and, therefore, Appellant was negligent because he did not act as a prudent Master under the circumstances.

Appellant contends that, at most, it was an error of judgment to turn north at 2340. This is questionable considering the possibility of not seeing the lighthouse and running onto the reef. The ship had been steaming for 17 hours without obtaining a fix, the fathometer was not effective in this deep water, and there is no mention of radar in the record. But assuming the circumstances were not so unfavorable that the act of navigating toward the reef constituted negligence, it is perfectly clear that it was only Appellant's subsequent negligent conduct which led to the casualty. There was nothing which compelled him to make this choice and nothing of an unexpected nature intervened to cause the accident.

The engine speed was not reduced from 11.5 knots at any time prior to striking the reef. Although the position of the ship was not known, Appellant apparently decided on the search pattern to follow the assumption that the ship was at the 2340 dead reckoning position past the reef. This was poor east-west zigzag pattern to follow for the position to the east where the ship actually was at 2340 and this possibility should have been considered by Appellant. Even then, his plan to sight the lighthouse first might have succeeded except that, as stated above, the ship returned on a westerly course which placed her twice as far to the north as intended by Appellant and too far from the lighthouse to see it. Finally, the reef was sighted dead ahead at a distance of only about 1/4 of a mile and not 2 to 3 miles as Appellant testified he estimated. These are acts of negligence by Appellant which caused the grounding.

It was particularly negligent for Appellant not to reduce the ship's speed while looking for an unlighted structure with a reef extending for 5 miles in a northerly direction from the structure. Appellant carelessly laid out a search pattern in the face of known danger and then failed to consider the probability that the water breaking on the reef would only be visible at a much shorter distance than the 130 foot high light structure. These errors

convince me that Appellant failed to take reasonable precautions to avoid striking the reef; that his conduct was negligent; and that such conduct was the cause of hitting the reef.

The order will be reduced in view of Appellant's prior clear record.

ORDER

The order of the Examiner dated at Portland, Oregon, on 20 July 1961, revoking Appellant's License No. 246725 as Master is MODIFIED to provide for a suspension of nine (9) months and the issuance of a Chief Mate's license for the this nine (9) months period. The Chief Mate's license shall not be subject to the probationary suspension imposed by the Examiner or any other similar restriction.

As so MODIFIED, the order is AFFIRMED.

E.J. Roland
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 1st day of May 1962.